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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

MICHELLE B.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent,

FRESNO COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Real Party In Interest.

F046707

(Super. Ct. No. 03CEJ300262-1)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Martin
Suits, Commissioner.

Michelle B., in pro. per., for Petitioner.

No appearance for Respondent.

Dennis A. Marshall, County Counsel, and Howard K. Watkins, Deputy County
Counsel, for Real Party In Interest.

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*Before Vartabedian, Acting P.J., Cornell, J., and Dawson, J.

Petitioner, in pro. per., seeks an extraordinary writ (Cal. Rules of Court, rule 38) to vacate the orders of the juvenile court terminating reunification services as to her son J., denying reunification services as to her daughter A. and setting a Welfare and Institutions Code section 366.26 hearing¹ as to both children. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In November 2003, the Fresno County Department of Children and Family Services (department) removed then 10-month-old J. from petitioner's custody and filed a dependency petition alleging petitioner's drug use and homelessness placed J. at risk of harm. (§ 300, subd. (b).) The juvenile court sustained the petition and ordered a plan of reunification which included substance abuse treatment and random drug testing. The court set a six-month review hearing for September 9, 2004.

In May 2004, petitioner gave birth to A. who was detained in June 2004. In a dependency petition filed on A.'s behalf, the department alleged that, on June 27, 2004, petitioner left an inpatient substance abuse treatment program and took A. with her. Petitioner left A. with someone who was unable to provide ongoing support and disappeared. The juvenile court detained A. and adjudged her a dependent child of the court. (§ 300, subds. (b) & ((g).) The court set the dispositional hearing for September 9, 2004.

In its six-month status review pertaining to J., the department reported that petitioner had not complied with her case plan and was arrested on September 4, 2004. The department recommended the court terminate reunification services. In its dispositional report as to A., the department recommended the court deny petitioner reunification services for multiple failures to complete drug treatment in 2004. (§ 361.5, subd. (b)(13).)

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

On September 9, 2004, the juvenile court combined the six-month review and dispositional hearing. The matters were contested and conducted on October 28, 2004. Petitioner appeared through counsel who submitted on the department's reports and admitted into evidence a letter from petitioner. In the letter, petitioner informed the court she was housed at the California Rehabilitation Center and planned to take advantage of any services offered there. She acknowledged the negative impact her drug use had on her family and admitted her lack of progress in reunifying with her children. She asked the court for more time to reunify with them.

After the parties submitted the matter, the court terminated reunification services for J., denied petitioner reunification services for A. and set a permanency planning hearing. This petition ensued.

DISCUSSION

Petitioner argues her attorney was ineffective for not ordering her transported to the October 28, 2004, hearing. She also claims she was improperly denied reunification services as to A. We find no merit to her claims.

A petitioner asserting ineffectiveness of counsel in juvenile dependency proceedings must prove both deficient performance based on an objective reasonable standard and prejudicial error. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) Counsel's performance is deficient if it "fell below an objective standard of reasonableness ... under prevailing professional norms." (*People v. Ledesma* (1987) 43 Cal.3d 171, 216.) Moreover, appellant has suffered prejudice if, absent counsel's errors, there is a reasonable probability of a more favorable outcome. (*Id.* at p. 218.)

An incarcerated parent has a statutory right to appear at the dispositional hearing. (Pen. Code, § 2625, subd. (d).) If the parent wants to personally appear, the juvenile court must issue an order for the temporary removal of the parent from the penal institution. (*Ibid.*) The juvenile court may not proceed in the absence of the parent or her attorney without an express waiver of the parent's right to be physically present. (*Id.*)

On this record, we cannot ascertain petitioner's desire with regard to appearance at the October 28, 2004, hearing. The record contains neither a transport order nor an express waiver of petitioner's right to appear. Nevertheless, petitioner was represented by counsel at the hearing. Moreover, she concedes in her petition that she was persuaded by a relative to write a letter to the court rather than personally appear. From her statement, we can infer that she waived her right to be physically present at the hearing. Therefore, her attorney acted reasonably in not requesting a transport order.

Even if counsel erred in not requesting a transport order, petitioner was not prejudiced by her failure to appear at the hearing. At the six-month review hearing, the juvenile court may terminate reunification services and schedule a permanency planning hearing where the dependent child on the date of removal was under the age of three years and the court finds by clear and convincing the parent failed to participate regularly in the court-ordered plan. (§ 366.21, subd. (e).) Further, at the dispositional hearing, the juvenile court may deny a parent reunification services when the court finds by clear and convincing evidence the parent has a history of extensive, abusive, and chronic use of drugs and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention. (§ 361.5, subd. (b)(13).) We review the juvenile court's orders for substantial evidence, resolving all conflicts in favor of the court and indulging in all legitimate inferences to uphold the court's finding. (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378-1379.)

In this case, petitioner cites no evidence that, if presented at the combined hearing, would have resulted in a favorable outcome. Rather, she concedes she failed to participate in her court-ordered plan. Moreover, she does not dispute the evidence of her chronic drug use and resistance to drug treatment. Therefore, even assuming petitioner did not waive her right to appear at the hearing, she was not prejudiced by her absence. We conclude counsel for petitioner was not ineffective for not ordering petitioner

transported to the hearing. Further, substantial evidence supports the juvenile court's findings and orders. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.